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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,066	04/01/2004	David T. Simpson	047968/271920	2685
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ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			BELLINGER, JASON R	
			ART UNIT	PAPER NUMBER
			3617	

DATE MAILED: 11/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/817,066	Applicant(s) SIMPSON, DAVID T.	
	Examiner Jason R. Bellinger	Art Unit 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-72 is/are pending in the application.
- 4a) Of the above claim(s) 6, 7, 15, 19, 20, 24, 33, 45, 47, 51, 62, 64 and 69-72 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-14, 16-18, 21-23, 25-32, 34-44, 46, 48-50, 52-61, 63 and 65-68 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. Applicant's election without traverse of the invention relating to species/subspecies (ai: drawn to Figures 1, 3-5, 11, 13-14)), (bi: drawn to Figures 6A, 7), and (ci: drawn to Figures 9A-B) in the reply filed on 25 August 2005 is acknowledged.

2. The Applicant asserts that claims 1-72 read on the elected embodiments. However, it should be noted that claims 6-7, 15, 19-20, 24, 33, 45, 47, 51, 62, 64, and 69-72 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 25 August 2005.

Drawings

3. Figure 2 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Art Unit: 3617

4. The drawings are objected to because the leader line for reference character 40 in Figure 4 requires an arrowhead, since the reference character indicates an assembly of parts.

Reference character "600" should be replaced with reference character --800-- in Figure 12. Reference character "800" should be replaced with reference character --700-- in Figure 14. Reference character "700" should be replaced with reference character --600-- in Figure 13.

In Figures 6A, and 7 the term ".44 Mag S&W" is a Trademark and should be indicated as such or removed from the drawings.

In Figure 8A, reference character "220" lacks a leader line indicating which element the reference character pertains to.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

Art Unit: 3617

Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 440, 439, 436. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 16, 126, 131, 219, 222, 225, 234, 240, 242, 246, 248, 250, 322, 333-334, 342, 346, 350, 360, 422, 433-434, 441, 446, 517. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are

Art Unit: 3617

required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

7. The disclosure is objected to because of the following informalities: It is unclear what is actually being described by the phrase "is not be configured" in line 28 of page 7.

In lines 21-22 of page 17, reference character "320" should be replaced with reference character --330--.

In line 11 of page 18, reference character "340" should be replaced with reference character --440--.

Appropriate correction is required.

Claim Objections

8. Claims 1, 8-11, 14, 25-26, 28, 32, 44, 53, and 61 are objected to because of the following informalities: The comma (,) should be replaced with a colon (:) at the end of line 7 in claims 1, 25, and 53.

Claims 14, 32, 44, and 61 are objected to due to the fact that the term "via" contains no structure. The term "via" does not define any physical structure of the invention, and should therefore be removed from the claims.

Claims 10-11 and 28 are essentially copies of claims 8-9 and 26, respectively. Both sets of claims contain the same limitations, and therefore claims 10-11 and 28 are considered to be redundant.

The term "define" should be replaced with the term --defines-- and the term "openings" should be replaced with the term --opening-- in line 3 of claim 11.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 3617

10. Claims 1-5, 8, 10, 13-14, 16-18, 21, and 67-68 are rejected under 35 U.S.C. 102(e) as being anticipated by Baker ('167). Baker shows a wheel assembly including a first rotating member (namely wheel 11), which has an exterior surface. A visual element 13 is disposed adjacent to the exterior surface of the first rotating element 11, wherein the visual element 13 has an outer perimeter. A second member 16 is mounted to rotate adjacent the first rotating member 11. The second member 16 defines an opening with an outer perimeter.

The first rotating member 11 and the second member 16 are adapted to move between: a first position in which the outer perimeter of the opening of the second member 16 does not substantially align with the outer perimeter of the visual element 13 (namely when the wheel 11 and visual element 13 are rotating); and a home position in which the outer perimeter of the opening of the second member 16 is substantially aligned with the outer perimeter of the visual element 13 (namely when the wheel 11 and visual element 13 have ceased rotating).

The first rotating member is a wheel 11, while the second member is a wheel spinner 16. The visual element 13, which is mounted to the first rotating member 11, is a substantially planar element configured to engage the wheel 11, such that both elements rotate in unison. The visual element 13 includes a first visual element (namely one of the spokes of element 13), and also includes a second visual element (namely another spoke portion of element 13) disposed adjacent to the exterior of the first rotating member 11 and includes an outer perimeter.

Art Unit: 3617

The first rotating member 11 and the second member 16 are mounted to rotate about a common axis. The second member 16 is mounted to rotate relative to the first rotating member 11 by a bearing 35. An aligning mechanism (namely the shape of the second member 16) maintains the second member 16 in the home position relative to the first rotating member 11, by reducing the rotational speed of the second member 16 relative to the first rotating member 11. The second member 16 remains in a substantially fixed radial orientation with respect to the rotation of the first rotating member 11. The second member 16 is weighted (by its shape) to move the second member 16 into the home position when the second member 16 substantially stops rotating.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 9, 11, 22-23, 25-28, 31-32, 34-40, 43-44, 46, and 48-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker ('167) in view of Wang ('810). Baker contains all of the limitations as set forth in paragraph 10 above, but does not show a plurality of openings in the second member corresponding to multiple visual elements.

Art Unit: 3617

Wang ('810) teaches the use of a wheel assembly that includes a first rotating member 3 having a plurality of visual elements (namely the spoke sections). A second member 6 includes a plurality of openings that substantially aligns with the visual members in a home position (see Figure 4). The second member 6 is configured to complement the visual elements of the first rotating member 3 to define a themed appearance. The second member 6 includes a complementary visual element (namely the spokes portions) to complement the appearance of the visual elements of the first rotating member 3. An alignment mechanism (namely weight 61) is affixed to the second member 6 to maintain the second member 6 in the home position. The second member 6 is a spinner and rotates relative to the first rotating member 3 through a bearing.

Therefore from this teaching, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the second member (spinner) of Baker with openings that correspond to a plurality of visual element of the first rotating member in order to provide a symmetrical and aesthetically pleasing assembly.

13. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baker ('167) in view of Hoxie. Baker contains all of the limitations as set forth in paragraph 10 above, but does not show the visual element being themed indicia.

Hoxie teaches the use of a first rotating member (namely a wheel cover) having a visual element that is themed indicia (in this case that of a pistol cylinder). Therefore from this teaching, it would have been obvious to one of ordinary skill in the art at the

Art Unit: 3617

time of the invention to form the visual element of Baker as themed indicia dependent upon the aesthetic taste, hobbies, etc of the owner.

14. Claims 29-30, 41-42, 53-61, 63, and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker ('167) in view of Wang ('810) as applied to claims 9, 11, 22-23, 25-28, 31-32, 34-40, 43-44, 46, and 48-50 above, and further in view of Hoxie. Baker as modified by Wang does not show the themed assembly resembling a loaded revolver cylinder.

Hoxie teaches the use of a themed assembly that resembles a loaded revolver cylinder, which includes a firing end of a bullet. Six bullets are shown. Therefore from this teaching, it would have been obvious to one of ordinary skill in the art at the time of the invention to form the visual element of Baker as modified by Wang to resemble a loaded revolve cylinder dependent upon the aesthetic taste, hobbies, etc of the owner.

While Baker as modified by Wang (in this case, specifically Wang) does not show the second member being formed to resemble a revolver cylinder with six openings, it would have been obvious to one of ordinary skill in the art at the time of the invention to form the second member of Baker as modified by Wang in such a manner to correspond to the firing ends of the bullets shown by Hoxie to complete the themed assembly. The second member would then be substantially circular in shape.

15. Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baker ('167) in view of Wang ('287). Baker contains all of the limitations as set forth in

Art Unit: 3617

paragraph 10, but does not show the wheel spinner (aka second member) having a substantially circular body with circular openings.

In Figure 8, Wang teaches the use of an element that could function as a spinner that has a substantially circular body with interior and exterior surfaces, and an outer perimeter. A median region is disposed between the outer perimeter and a central mounting area. The circular body defines a plurality of substantially circular openings uniformly distributed about the median area of the element, and a plurality of substantially semi-circular recesses disposed adjacent to the outer perimeter and substantially between adjacent openings.

Therefore from this teaching, it would have been obvious to one of ordinary skill in the art at the time of the invention to form the spinner (aka second member) of Baker with the structure taught by Wang, dependent upon the desired aesthetic appearance of the assembly.

16. Claim 66 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baker ('167) in view of Wang ('810) and in further view of Hoxie as applied to claims 29-30, 41-42, 53-61, 63, and 65 above, and further in view of Wang ('287). Baker as modified by Wang and Hoxie does not show the outer periphery of the spinner (aka the second member) including substantially semi-circular recesses about its circumference.

As best shown in Figure 8, Wang ('287) teaches the use of an element having a plurality of substantially semi-circular recesses disposed adjacent about the outer perimeter. Therefore from this teaching, it would have been obvious to one of ordinary

Art Unit: 3617

skill in the art at the time of the invention to form the spinner (aka second member) of Baker as modified by Wang and Hoxie with outer peripheral semi-circular recesses, dependent upon the desired aesthetic appearance of the assembly.

Response to Amendment

17. The Attorney's request for withdrawal as agent or attorney received 15 September 2005 is currently under consideration.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references are considered to show a wheel assembly having a themed appearance. For example, Baker ('334) shows a wheel assembly having a themed appearance.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason R. Bellinger whose telephone number is 571-272-6680. The examiner can normally be reached on Mon - Thurs (9:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3617

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jason R Bellinger
Examiner
Art Unit 3617

JASON R. BELLINGER
PATENT EXAMINER

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11/7/05